

10/613,676

**REMARKS**

The Applicant thanks the Examiner for indicating that claims 12, 13, 17, 19 and 20 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. In accordance with this indication, claims 13, 17 and 20 are editorially revised while claims 12 and 19 are suitably revised to be independent claims and those two revised independent claims are now believed to be allowable. As claims 13 and 17 depend directly from independent claim 12 and as claim 20 depends directly from independent claim 19, those dependent claims are believed to be allowable as well.

The specification is then objected to, under 35 U.S.C. § 132, as containing new subject matter—the Preliminary Amendment accompanying this patent filing is objected to since it introduces new subject matter. As the Examiner has appreciated, the Preliminary Amendment, introducing the objected to subject matter, was submitted on the same day as the other patent application filing documentation. In view of this, it is acknowledged that the Preliminary Amendment constituted part of the original application papers and thus, it is respectfully submitted, that no new matter has, in fact, been entered into this application.

The Applicant understands the case law as “[n]o new matter may be introduced into a nonprovisional application after its filing date even if a supplemental oath or declaration is filed” 37 CFR § 1.67(b) (emphasis added). However, “[i]f an amendment is filed on the same day that the application under 37 CFR § 1.53(b) is filed and referred to in the original oath or declaration filed with or after the application, the amendment constitutes a part of the original application papers and the question of new matter is not considered” M.P.E.P 602 V. Additionally, “[w]here a 37 CFR § 1.53(b) application is filed without a signed oath or declaration and such application is accompanied by an amendment, that amendment is considered a part of the original disclosure. The subsequently filed oath or declaration must refer to both the application and the amendment” M.P.E.P 608.04(b).

B1604-2:45 PM

10/613,676

As the Preliminary Amendment was "filed on the same day that the application. . .[was] filed", the Applicant believes that the Preliminary Amendment constitutes a part of the original application papers—provided that a subsequently filed oath or declaration refers to both the application and the amendment. Accompanying this response is a Supplemental Declaration and Power of Attorney form which refers to both the above identified application as well as the Preliminary Amendment accompanying the July 3, 2003 filing. In view of this, the Applicant respectfully submits that the Preliminary Amendment, accompanying the July 3, 2003 filing, does constitute part of the original application papers and the question of new matter should not be considered in this situation. In view of the foregoing, the objection, under 35 U.S.C. § 132, should now be withdrawn.

Next, claims 11 and 14 are rejected, under 35 U.S.C. § 102(e), as being anticipated by Rodriguez et al. '013, while claim 21 is rejected, under 35 U.S.C. § 102(a), as being anticipated by Remmlinger et al. '844 and claims 11, 14-16, 18 and 21 are rejected, under 35 U.S.C. § 102(b), as being anticipated by Magee et al. '805. The Applicant acknowledges and respectfully traverses the raised anticipatory rejections in view of the following remarks.

In view of the above amendments to claims 12 and 19, the Applicant respectfully submits that further comments concerning the applied prior art of Rodriguez et al. '013, Remmlinger et al. '844 and/or Magee et al. '805 is not believed necessary. The Applicant also notes the remaining prior art cited in the official action. As none of that additional art is applied by the Examiner against the claims of this application, the Applicant is not providing any comments concerning that art as well.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the foregoing, it is respectfully submitted that the raised rejections should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

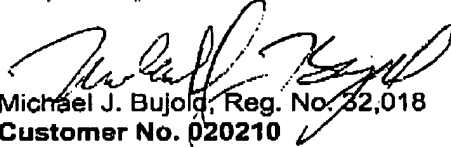
01204 -2:45 PM

10/613,676

The Applicant respectfully requests that any outstanding objections or requirements, as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully-submitted,



Michael J. Bujold, Reg. No. 32,018

Customer No. 020210

Davis & Bujold, P.L.L.C.

Fourth Floor

500 North Commercial Street

Manchester NH 03101-1151

Telephone 603-624-9220

Facsimile 603-624-9229

E-mail: patent@davisandbujold.com